

**CHAPTER 56**  
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**CHAPTER 56**  
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**5600.00. SCOPE OF CHAPTER.**

This Chapter of Regulations has been duly adopted by the Board of Directors and is limited in its application to delivery warehouses for Apple Juice Concentrate (AJC). Trading, clearing, settlement, delivery and any other matters not specifically covered herein shall be governed by the MGEX Rules and Regulations, or otherwise delegated to the Exchange to establish policies and procedures that implement the MGEX Rules and Regulations.

**5601.00. DELIVERY WAREHOUSES: CONDITIONS FOR BECOMING REGULAR.**

When and if the terms and conditions set forth herein have been complied with, and not otherwise, the Exchange may declare a warehouse "Regular" for delivery.

Persons operating a warehouse who desire to have such warehouse become or remain Regular for delivery of AJC under the Regulations of the Exchange shall file an application or renewal form as prescribed by the Exchange. (See **Form 56-01.00.**) Renewal for Regularity must be filed prior to March 1 for a one (1) year term beginning the following May 1. Application for Regularity may be made at any time during a current term for the balance of that term. However, if an applicant is approved during the months of February, March or April, their initial Regularity term will include the following one (1) year term. Initial Regularity during the term shall become effective on the last business day in the month (or earlier if deemed necessary) in which the Exchange approves such application.

The Exchange may approve renewal of Regularity and may revoke said Regularity for cause at any time. Denial or revocation of Regularity by the Exchange may be appealed to the Board of Directors. The decision of the Board of Directors shall be final.

Application for Regularity may be made by persons operating eligible warehouses receiving AJC product and located within 100 miles of major shipping ports along the mainland coasts of the United States. The Board of Directors and Exchange shall have sole discretion to determine locations suitable for delivery on the AJC futures contract. Such locations may be amended as determined necessary by the Board and Exchange for efficient AJC delivery. (Subject to any CFTC approval or notification.)

Each applicant and Regular warehouse must have, agree to and remain in compliance with the following requirements:

- A. A facility for the cold storage, handling and delivery of AJC in drums or bins. Cold storage means the ability to store AJC at or below 0° degrees Fahrenheit. Delivery means having the equipment and ability to load and unload semi-tractor trailers;
- B. An electronic database recordkeeping system in which the arrival to and departure from the facility of AJC inventory is entered. Furthermore, the system must be able to clearly identify by multiple identifiers including but not limited to lots, sublots, and each drum or bin and the location thereof within the facility. Such system must be able to identify product should it be subject to recall;

- C. Collect, maintain and forward such information and documents as may be requested by the Exchange including weekly or more frequent AJC inventory and stock reports. (See [Form 56-01.00.C.](#)) Further, allow MGEX such access to records or databases as necessary to verify information and stocks;
- D. Establish FedEx, electronic mail, or such other accounts as needed with MGEX, product owners, the testing agency and clearing members to effectively and efficiently communicate intentions, send/receive documents, confirm instructions, make payments, etc;
- E. A facility and equipment sufficient for samples to be able to be taken, and assistance to inspectors so they may be able to take samples. This includes retrieving and moving drums and bins as requested. Warehouses cannot interfere with the sampling process. A warehouse must contact the USDA sampling/testing agent within one (1) business day upon request of the owner of the AJC product;
- F. Obtain any required and maintain a valid or required license permitting the warehouseman to own or operate a cold storage facility, and/or store and handle processed food products such as AJC. The license(s) may be issued by the municipality, a state or the federal government;
- G. Maintain compliance with applicable product handling and health code requirements (such as HACCP requirements) established by any regulatory agency or entity, such as the FDA and USDA, with jurisdiction or oversight authority over the warehouse or products stored by the warehouse. Further, cooperate with or provide such agency or entity access to records, products or the premises, if so required by law or regulation. MGEX Rules and Regulations shall not shield a warehouse from compliance with any laws or regulations. A facility must cooperate with any product recalls or any other food safety inquiries regarding AJC. MGEX shall not be liable to any party for the quality of product or product recalls;
- H. Provided AJC product has been stored, tested, and identified as established in the MGEX Rules and Regulations, complete and issue negotiable warehouse receipts within one (1) business day (in a form acceptable to MGEX) upon request of the owner of the AJC product. See Form 54-04.00.E. for an example of an acceptable negotiable warehouse receipt. A Regular warehouse shall honor all receipts it issues. Further, a warehouse shall be responsible for the content, accuracy and completeness of any receipt it issued for delivery on an AJC futures contract. Except for choice of law provisions, the laws of the state of Minnesota shall govern any negotiable warehouse receipt issued on AJC product and used to deliver on the AJC futures contract. MGEX disclaims any liability for the use of negotiable warehouse receipts used for delivery against the AJC futures contract;
- I. Provide a tariff or fee schedule listing the rates for storage and handling of AJC drums and/or bins and agree to make such rates public. A Regular warehouse may provide the owner of products stored a lower storage rate based on volume of business. However, a warehouse cannot charge any subsequent owner of a negotiable warehouse receipt a higher storage rate than the original owner. Changes to tariffs must be provided thirty (30) days prior to effective date. In all instances, fees and tariffs charged by the warehouse must be satisfactory to the Exchange. MGEX may establish a maximum storage rate on AJC warehouse receipts used for delivery on an AJC futures contract.

Further, MGEX may establish maximum handling charges or fees. A warehouse may not charge more than one party for the same service (i.e. no double charging);

- J. Abide by and agree to be subject to MGEX Rules and Regulations, including but not limited to those procedures described in MGEX documents made available by the Exchange. A Regular warehouse acknowledges the priority of MGEX Rules and Regulations should there be a conflict or dispute as to the application of appropriate authority or the interpretation of MGEX Rules and Regulations. **All Regular warehouses agree to submit to the arbitration jurisdiction provided in the MGEX Rules and Regulations;**
- K. Immediately inform the Exchange of any adverse or potential adverse changes in status or financial conditions;
- L. Be in good financial standing, and meet and maintain the following minimum financial requirements as evidenced by submission of the required financial statements:
  - 1. **Working Capital** (excess of current assets over current liabilities) of at least \$500,000. A bond, T-bill, cash or letter of credit paid to or in favor of MGEX in the amount of \$500,000 may be acceptable at the discretion of the Exchange if this requirement is not met;
  - 2. **Net Worth** of at least \$500,000. A bond, T-bill, cash or letter of credit paid to or in favor of MGEX in the amount of \$500,000 may be acceptable at the discretion of the Exchange if this requirement is not met;
  - 3. MGEX has sole discretion to limit the number of negotiable AJC warehouse receipts eligible for delivery on the AJC futures contract that may be issued by a Regular Warehouse based on financial condition. Further, MGEX has sole discretion to request additional financial credit from a warehouse or revise financial requirements as it deems necessary;
- M. Submit the following financial information to the Exchange Corporate Secretary:
  - 1. **Annual Audited Financial Statement** prepared by an independent public accountant in accordance with generally accepted accounting principles, and submitted no later than ninety (90) days after the fiscal year end;
  - 2. **Unaudited Financial Statement** reviewed by an independent licensed or public accountant may be submitted only if an audited financial statement is not available. If reviewed financial statements are not available, other financial statements may be submitted. However, if audited financial statements are not submitted, Regularity status may only be granted under conditions determined by the Exchange in its sole discretion. In such

instances, the minimum financial standards may be significantly higher than stated in this chapter. Further, the Exchange may require additional or greater financial surety, including bonds, T-bills, cash and letters of credit. If audited financial statements are not submitted, a bond, T-bill, cash or letter of credit paid to or in favor of MGEX in the amount of \$1 million will be required. However, this amount may be modified at the discretion of the Exchange;

3. **Interim Unaudited Financial Statement** (balance sheet and income statement) submitted no later than forty-five (45) days after the mid-year point of the warehouseman's fiscal year. An interim financial statement is required of all warehouses submitting an annual financial statement under 1 or 2 above;
4. If **no financial statements** are submitted, a bond, T-bill, cash or letter of credit paid to or in favor of MGEX in the amount of \$2 million will be required. However, this amount may be modified at the discretion of the Exchange;

Note: MGEX has sole discretion to grant an extension of time to file a financial statement upon the written request of the warehouse and provided such request is received by MGEX prior to the financial statement due date.

N. Obtain, maintain and submit proof of the following insurance:

1. **Legal Liability** coverage for the loss of goods. The general terms of the legal liability insurance shall be stated on the negotiable warehouse receipt. A new certificate of insurance must be provided to MGEX prior to expiration of the coverage policy;
2. **Building or Property Insurance** in an appropriate amount satisfactory to MGEX;
3. **Product Insurance** that, at a minimum, is common in the industry and may be required by law or license. If the warehouse does not maintain full coverage or is not required to provide full coverage, the warehouse must disclose to the owner the amount of coverage so provided. Coverage may be disclosed in the fee schedule, tariff or negotiable warehouse receipt. If the stored AJC is not insured by the warehouse, it must be clearly stated on the warehouse receipt. The owner may obtain additional coverage at his own expense. However, the warehouse shall be responsible for product losses for which it is legally liable;

Note: MGEX has sole discretion to limit the number of negotiable AJC warehouse receipts that may be issued based on insurance coverage. Further, MGEX has sole discretion to request additional insurance from a warehouse or revise minimum insurance requirements as it deems necessary.

- O. Obtain, maintain and submit proof of a **performance bond** in the minimum amount of \$250,000 in favor of MGEX or purchase and hold a membership of MGEX. A T-bill, cash or an unconditional and irrevocable letter of credit paid to or in favor of the Exchange may be substituted for the \$250,000. The amount of bonds, T-bills, cash or a single letter of credit may not be used to meet more than one financial or regulatory requirement. Further, MGEX has sole discretion to request additional bond or revise the minimum bonding requirements as it deems necessary. All forms of bonds and letters of credit must be satisfactory to MGEX and issued by acceptable sureties. MGEX may waive this requirement in its sole discretion should MGEX determine the warehouse has sufficient insurance and financial standing;
- P. Any MGEX memberships or amount paid to or in favor of MGEX is available to the Exchange to use in its discretion upon a failure of the pledging warehouse to meet its obligations required by the MGEX Rules and Regulations;
- Q. Exercise such care in regards to stored AJC product as a reasonably prudent man would exercise under like circumstances as well as follow any prescribed MGEX Rules and Regulations related to AJC product. Failure to exercise such duty of care shall subject the warehouse to liability for loss, damage or destruction of AJC product; and
- R. Limit the number of negotiable AJC warehouse receipts outstanding at any one time if requested or determined by the Exchange. The number of negotiable 1,800 gallon warehouse receipts that a warehouse can issue and have outstanding may be limited by the warehouse's financial condition, type of financial statement, insurance coverage, performance bond, or such other factors the Exchange shall determine in its sole discretion presents a potential risk that should be considered in its analysis and decision.

#### **5602.00. CANCELLATION, EXPIRATION, REVOCATION OR WITHDRAWAL OF REGULARITY.**

A "Regular" warehouse shall not withdraw as Regular except after a ninety (90) day notice to the Exchange, or having obtained written consent of the Exchange.

In the event of cancellation, expiration, revocation, or withdrawal of Regularity, owners of outstanding negotiable warehouse receipts shall be given sixty (60) days to take load-out of AJC from the facility. After such time, the outstanding negotiable warehouse receipts will not be eligible for delivery against an AJC futures contract. Such time may be modified by the Exchange.

The Corporate Secretary will post notice of any cancellation, expiration, revocations or withdrawal of Regularity.

**5603.00. RECORDS, REPORTS, VISITATION OF PREMISES REQUIRED BY COMMODITY EXCHANGE ACT.**

Warehousemen operating Regular warehouses, in compliance with the provisions of the MGEX Rules and Regulations and the Commodity Exchange Act, as amended and the Regulations promulgated thereunder shall:

- A. Keep records showing the stocks of AJC in store in such warehouses regardless of whether or not a warehouse receipt has been issued for such AJC product;
- B. Upon call from the Commodity Futures Trading Commission, report the stocks of AJC and furnish information concerning AJC stocks for future delivery about to be transferred or in process of being transferred, or otherwise moved into or out of such warehouses, as well as any other information concerning AJC stored in such warehouses and that are or may be available for delivery on AJC futures contracts;
- C. Permit visitation of the premises and inspection of the books and records of such warehouses by duly authorized representatives of the United States Department of Agriculture, the Department of Justice or the Commodity Futures Trading Commission, and to keep all books, records, papers and memoranda relating to the storage and warehousing of commodities in such warehouses for a period for five (5) years from the date thereof.

**5604.00. INFORMATION AND ACCESS TO RECORDS AND REPORTS BY MGEX.**

Operators of MGEX-approved Regular warehouses shall disclose and timely file with the Exchange such information as requested, including but not limited to: quantity and condition of stocks in store; AJC in transit, purchased, sold, owned, held for others, consigned, assigned, transferred, delivered, or loaded out; and information on warehouse receipts issued and outstanding, cancelled without delivery and cancelled with delivery.

The information to be provided shall be in the manner, method and format determined by the Exchange and at such times determined by the Exchange. Such information may be requested on a daily, weekly or periodic basis.

Operators shall accord every facility to any duly authorized committee or person for:

- A. the examination of its books and records.
- B. the purpose of ascertaining the stocks of commodities which may be on hand at any time.

Such examination and verification may be made any time by the Exchange or its approved inspection agents or, any other committee authorized by the Exchange, which shall have the authority to employ appropriate personnel to determine the quantity and quality of AJC product in the warehouses and to compare the books and records of the said facilities with the records of any State or Federal authority.



Operators shall keep all books, records, papers and memoranda relating to the storage and warehousing of commodities in said facilities for a period of five (5) years.

#### **5605.00. MISCELLANEOUS.**

The MGEX Rulebook and procedures do not supersede state or Federal law. MGEX shall not be liable for the costs incurred by warehouses to become and remain Regular. Further, MGEX shall not be liable to warehouses or any party for actions taken by MGEX to enforce this chapter or the MGEX Rulebook, or for actions taken by MGEX pursuant to authority under this chapter or this Rulebook. MGEX may take such actions it determines in its sole discretion are necessary to address delivery or stock matters including potential manipulation.

A Regular warehouse, or the operator of a Regular warehouse, may be held liable to a product owner, warehouse receipt holder, clearing member, or other affected party for failure to follow MGEX Rules and Regulations. This potential liability includes, but is not limited to, costs and delays from incomplete or inaccurate warehouse receipts, failure to timely request for sample testing, failure to promptly issue a negotiable warehouse receipt, failure to promptly forward documents to the appropriate party, improper recordkeeping, improper charges or fees, or lost or missing documents.